



**Billing Code: 3410-30-P**

## **DEPARTMENT OF AGRICULTURE**

### **Food and Nutrition Service**

#### **7 CFR Parts 271, 273, and 281**

**[FNS-2009-0019]**

**RIN 0584-AD97**

#### **Supplemental Nutrition Assistance Program (SNAP): Updated Trafficking**

#### **Definition and Supplemental Nutrition Assistance Program – Food Distribution**

#### **Program on Indian Reservations Dual Participation**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule

**SUMMARY:** The Food and Nutrition Service (FNS) is changing the Supplemental Nutrition Assistance Program (SNAP or Program) regulations pertaining to SNAP client benefit use, participation of retail food stores and wholesale food concerns in SNAP, and SNAP client participation in the Food Distribution Program on Indian Reservations (FDPIR). These changes to SNAP regulations address mandatory provisions of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246 (hereinafter referred to as “the 2008 Farm Bill”) to allow for the disqualification of a SNAP client who intentionally obtains cash by purchasing, with SNAP benefits, products that have container deposits, subsequently discarding the product, and returning the container(s) in exchange for cash refund of deposit(s); or who intentionally resells or exchanges products purchased with SNAP benefits for purposes of obtaining cash and/or other non-eligible items.

Through existing authority under the Food and Nutrition Act of 2008, FNS is also stipulating penalties for certain Program abuses committed by retailers. These abuses include stealing of SNAP benefits, by retailers, without client complicity, and other forms of trafficking through complicit arrangements between the retailer and the SNAP client. Examples of the latter would be the purchase, by retailers, of products originally purchased by clients with SNAP benefits and re-sold to stores in exchange for cash or other non-eligible items; or retailers taking possession of SNAP client cards and PINs, using the SNAP benefits to purchase stock for the store, and subsequently returning the card and PIN to the client with cash or other non-eligible items provided in exchange for having used the SNAP benefit.

FNS is also addressing the mandatory 2008 Farm Bill provisions requiring disqualification in SNAP when an individual is disqualified from FDPIR, and under existing authority, clarifying the prohibition against dual participation in SNAP and FDPIR.

**DATES:** Effective date: [insert the date that is 30 days from date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Andrea Gold, Director, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Ms. Gold can also be reached by telephone at 703-305-2434 or by email at [Andrea.Gold@fns.usda.gov](mailto:Andrea.Gold@fns.usda.gov) during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday.

## **SUPPLEMENTARY INFORMATION:**

### **EXECUTIVE SUMMARY:**

#### **I. Purpose of Regulatory Action:**

The rule codifies nondiscretionary SNAP eligibility disqualification provisions and FDPIR provisions of the 2008 Farm Bill and addresses retailer Program violations.

This final regulation will allow the Department to take appropriate action against retailers who are stealing SNAP benefits from clients or colluding with clients to traffic benefits, and will allow State agencies to take appropriate action against violating clients. The regulations will also ensure that clients who commit intentional Program violations (IPVs) in FDPIR are not able to participate in SNAP while serving their FDPIR disqualification, and will ensure that no client is able to dually participate in SNAP and FDPIR.

#### **II. Major Provisions:**

This rule updates the definition of SNAP trafficking to encompass the intentional acquisition of cash by purchasing with SNAP benefits containers with deposits, discarding the product, and returning the containers to obtain cash refund deposits; the intentional sale of products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; the intentional purchase of products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; and the stealing of SNAP benefits.

Further, this rule corrects the existing regulatory citation related to the requirement that State SNAP agencies ensure that dual participation in FDPIR and SNAP not be permitted.

Finally, this rule requires that State SNAP agencies not allow a client who has been disqualified from FDPIR for an intentional program violation to participate in SNAP until the disqualification period has expired.

### **III. Cost and Benefits:**

This final rule will primarily codify mandatory provisions of the statute. The Department anticipates that the rule will have a nominal cost impact on States that pursue clients who are defrauding the Program in the ways described. As the Department has an existing process for managing retailer compliance, the cost of pursuing retailers who violate Program rules in the manner described is also nominal. The problems being addressed in the rule are extremely unusual and the Department has no data on which to base an estimate of their frequency or the amount of benefits that might be involved. The final rule also updates the existing definition of trafficking, and as such there are no incremental cost or benefit repercussions.

State SNAP and FDPIR agencies will be required to perform checks for dual participation in their Programs and to ensure that clients disqualified from either SNAP or FDPIR are not allowed to participate in the alternate program. Cross-program checks for duplicate participation in SNAP and FDPIR are already required and checks for ensuring that clients disqualified from SNAP or FDPIR are not participating in the

alternate program should follow a similar process; therefore the checks will not significantly impact administrative costs.

This rulemaking codifies provisions in the Food and Nutrition Act of 2008 that improve Program integrity, thereby enhancing the Program's ability to serve those who are truly in need, and helping to ensure that SNAP benefits are used as intended.

### Background

In this final rule, the Department is revising SNAP regulations in accordance with Section 4131 (Eligibility Disqualification) of the 2008 Farm Bill to update the definition of trafficking to include certain Program abuses by clients. The Department is also taking this opportunity to address certain retailer abuses of the Program. These types of abuse are not specifically addressed in the current definition of trafficking.

This rule also addresses Section 4211 (Assessing the Nutritional Value of the Food Distribution Program on Indian Reservations (FDPIR) Food Package) of the 2008 Farm Bill which requires, among other things, reciprocal disqualification in SNAP when an individual is disqualified from FDPIR. These regulatory changes codify the mandatory statutory requirement to make reciprocal SNAP disqualification mandatory in instances of disqualification from FDPIR.

Dual participation in SNAP and FDPIR is prohibited under existing authority in the Food and Nutrition Act of 2008 and is codified in existing regulations. The Department is making a technical correction to existing regulations regarding this mandatory prohibition.

This rule was proposed on June 20, 2011, at 76 FR 35787, and public comments were invited through August 19, 2011. Comments have been considered and adjustments made to the final rule.

#### Summary of Comments and Explanation of Revisions

Twenty-five comments were received from various stakeholders and are available for public inspection on line at [www.regulations.gov](http://www.regulations.gov).

In general, commenters supported the regulations as proposed. Several commenters however, expressed concern that lacking further specificity, this regulation could result in States acting to administratively disqualify clients without sufficient cause. Commenters noted that client violations should be treated as IPVS rather than trafficking.

Commenters further noted that defining client violations as “intentional” and providing specific examples of when client actions would be considered violations is critical. One commenter suggested that specific examples of non-violations be included in the trafficking definition. Commenters requested that the Department provide the specific legal standard necessary for taking client action in instances of indirect trafficking and beverage dumping. One commenter noted that the final rule should make clear that neither eligibility workers nor fraud investigators may summon recipients to be questioned about, or respond to accusations concerning, use of their SNAP benefits for authorized foods.

The Department notes that intentional Program violations, as defined in 7 U.S.C. 2015 of the statute and 7 CFR 273.16, include SNAP benefit trafficking. Throughout the Program’s history, trafficking has been defined as “...the exchange of SNAP benefits for cash or consideration other than food...” While intentionally discarding beverages for

purposes of collecting cash deposits, or intentionally purchasing items with SNAP benefits for purposes of re-selling those items for cash constitute an indirect exchange, the intent – i.e. exchanging SNAP benefits for cash – is the same and the activity constitutes trafficking. This regulation is intended to target egregious and intentional Program violations. Penalties and processes that States must follow when pursuing IPV's (including trafficking violations) are defined and regulated in 7 CFR 273.16 - “Disqualification for intentional Program violations”; these penalties and processes remain unchanged.

Several commenters noted that under 7 U.S.C. 2015 [Section 6(p)] of the statute, disqualification for discarding beverages is only appropriate when at least four distinct conditions are met: (1) the recipient purchased products in containers carrying deposits with SNAP benefits; (2) the recipient made that purchase with the intent of obtaining cash by disposing of the contents and returning the container; (3) the recipient did in fact dispose of the contents; and (4) the recipient did in fact return the container. One commenter further noted that the statute also authorizes the Department to further limit the scope of these disqualifications by establishing additional requirements for the disqualification and that this would allow the Department to narrow, but not broaden, these elements to ensure that this penalty is not misapplied. The commenter suggests that the final rule should lay out each of these elements separately, numbered distinctly, so that investigators can clearly see that they must have evidence of each of them before proceeding. Further, this commenter notes that if the Department does not add further specificity, an environmental impact study should be conducted to assess any negative impacts on bottle returns as a result of this rule.

The Department has incorporated further specificity into the final rule. The Department has concluded that an environmental impact study is not warranted.

A commenter further noted that trafficking violations are subject to claims and that advocates in several states report that State investigators routinely allege, and Administrative Law Judges find, that all benefits received in a month, or even in a certification period, when there is a finding of trafficking should be subject to a claim, regardless of the actual amount trafficked. The commenter contends that this has no support in the statute, and it obliterates distinctions between small mistakes and egregious abuse. To prevent a similar phenomenon with these new disqualifications, the commenter suggests that the final rule explicitly state that only the amount misspent or trafficked may be treated as a claim.

The Department concurs on the basis of trafficking-related claims regulations at 7 CFR 273.18(c)(2), “Trafficking-related claims. Claims arising from trafficking-related offenses will be the value of trafficked benefits as determined by: (i) the individual’s admission; (ii) adjudication; or (iii) the documentation that forms the basis for the trafficking determination.”

One commenter notes that in addressing these new violations, the statute allows disqualifications based only on criminal convictions, civil judgments, or decisions in administrative disqualification hearings and, as such, no waivers should be allowed. The commenter further suggests that, if disqualification waivers are allowed, the Department should clarify that the State agency does not have sufficient evidence to warrant scheduling a hearing, within the meaning of 7 CFR 273.16(f)(1)(i), unless it has evidence that each of the elements necessary for disqualification (i.e., found to have obtained cash



by intentionally purchasing products with SNAP benefits that have containers that require return deposits, intentionally discarding the product, and intentionally returning the container for the deposit amount, or found to have intentionally sold any food that was purchased using SNAP benefits) is met.

The Department considers waivers integral to the administrative, civil, and criminal process. Waivers can assist clients in avoiding a criminal charge on their permanent record. It is acknowledged however, that States should not offer a waiver to a client unless the State has sufficient evidence to warrant an administrative hearing or referral for civil or criminal prosecution, as provided in 7 CFR 273.16(f).

States expressed concern regarding their ability to monitor and take action against individual clients who commit violations such as purchasing and then intentionally discarding beverages in order to collect cash deposits, or indirectly trafficking benefits. One commenter suggested that States maintain responsibility only for client eligibility oversight and that investigation of acts outside of the realm of client eligibility fall to the purview of the Department.

The Department recognizes the resource challenges faced by State and local governments. However, the 7 U.S.C. 2015 of the statute and regulations at 7 CFR 273.16 bestow responsibility for broad client oversight to State Agencies. Violators damage the integrity of the Program and must be subject to appropriate consequences; this rule gives States the ability to take action when intentional violations are discovered.

Two commenters noted that the term “consideration” in the definition of trafficking should be removed as consideration can be an intangible item that does not have a specific price or value. The Department is aware of instances in which clients have

exchanged or attempted to exchange SNAP benefits for services that would fit the definition of “consideration other than eligible food” (e.g., bartered services) and for purposes of Program integrity has therefore opted not to make this adjustment.

Commenters suggested that clients whose SNAP benefits are stolen should receive replacement benefits when there is clear evidence of theft. One commenter suggested that, at a minimum, revised regulations should allow for the replacement of benefits when a household makes a formal report of stolen benefits to the SNAP office and to the local law enforcement agency, and when a review of Electronic Benefit Transfer (EBT) transactions show that the household’s benefits were redeemed through keyed, rather than swiped, transactions. The Department acknowledges this concern. However, because all interested parties did not have an opportunity to consider this change, the Department may propose changes to the regulations guiding replacement in a future rulemaking. Keyed transactions still require both a card and personal identification number (PIN) and, in general, if the PIN number is secured and/or a stolen card is reported immediately, benefits will not be lost.

One commenter suggested that client penalties only apply when the violations were committed by a household member or an authorized representative of the household. The determination as to whether the client should bear responsibility for violations will depend upon the circumstances of the case and is therefore a determination to be made by State hearing officials. We are unable to address every situation in these regulations. However, the Department holds retailers responsible for ensuring that all store employees know and understand Program rules and abide by those rules; when employees commit violations, SNAP authorized retailers bear responsibility. Similarly, clients are

responsible for ensuring that anyone who is freely given access to their SNAP benefits, whether a household member, formally recognized authorized representative or informal authorized representative, uses those benefits appropriately.

One commenter requested that USDA explicitly state that allowing a non-household member access to the EBT card and PIN should not be treated as a trafficking offense, unless there is other clear and convincing evidence of fraudulent activity in connection with the card and PIN use. The Department acknowledges that giving a non-household member access to EBT benefits for purposes of assisting the household with shopping activities is not trafficking. However, as noted, the head of household maintains responsibility and is subject to penalties for fraudulent activity conducted by any person given access to EBT benefits by a household member, whether a formally documented authorized representative or a non-household member that is assisting the household.

One commenter is concerned about the improper disqualification of SNAP clients who provide incorrect or misleading information on their SNAP application or recertification form or who fail to timely report a change but without fraudulent intent. This commenter requested that the Department clarify the IPV legal standard associated with these issues. The Department acknowledges these comments, but notes that they fall outside of the scope and intent of this rulemaking.

One commenter noted the difficulties retailers have in tracking clients who purchase beverages and intentionally discard those beverages and return to stores for the cash deposits. The Department acknowledges the challenges associated with this activity and does not expect SNAP authorized retailers to take responsibility for monitoring bottle

returns. Instead, the Department is providing States an avenue for taking action on clients who are violating Program rules in this manner.

One commenter was confused by the term “discard.” Trafficking applies when beverages are intentionally discarded – i.e. disposed of by the purchaser, rather than consumed - for purposes of returning the containers for the cash deposit. Further, it has come to our attention that at least one individual has, in fact, taken steps to get the deposit back without emptying the contents of the deposit bottle. Since this is contrary to the intent of this provision in the statute, the Department is treating such situations as the equivalent of discarding the contents, and is expanding coverage to include those who collect deposits without taking steps to consume the product.

One commenter suggested that clients be prevented from purchasing water to mitigate the issue of having beverages be intentionally discarded so the containers may be returned for cash. One commenter implied that this rulemaking is an indirect attempt to prohibit purchase of soft drinks with SNAP benefits, and another commenter believed any indirect impact that would reduce the purchase of sugary drinks is positive. Prohibiting purchase of specific products falls outside the authority of this rule. SNAP eligible foods are defined in Section 3 of the Food and Nutrition Act and cannot be amended by regulation.

One commenter asked the Department to specify that trafficking in farmers’ market scrip is equivalent to indirectly trafficking SNAP benefits. The Department considers the trafficking of farmers’ market scrip to be the equivalent of trafficking by purchasing a product and reselling it for cash or consideration other than eligible food. The Department does not believe that further specificity is necessary in this regulation.

Two commenters noted that the definition of trafficking as written in the proposed rule is a run-on sentence and therefore lacks clarity. The Department has reviewed the definition to assess clarity and ensure it meets legal formatting requirements. The definition has been adjusted to adopt statutory language and thereby clarify client violations, but no additional formatting changes have been made.

One commenter noted that a national system for checking duplicate participation or IPV disqualifications is practically necessary if States are to be held accountable for prohibiting dual participation and implementing reciprocal disqualification with FDPIR. The Department acknowledges the challenges associated with operations when such a national database is unavailable. This rule gives States the ability to prohibit dual participation and invoke reciprocal disqualifications based on available information.

Finally, one commenter urged the Department to ensure that Indian Tribal Organizations (ITO) staffs are fully integrated in the consultation and coordination of planning and decisions regarding administrative systems, certification monitoring, and developing Memorandums of Understanding (MOUs) – especially where USDA and state agencies control access to information, administrative resources and capacity; and that the Department provide meaningful and timely responses to ITO concerns regarding changes. The Department acknowledges this comment and notes that at USDA tribal consultations held in fiscal year 2011, this rule was discussed. Feedback from those consultations is incorporated in the section of this rule titled Executive Order 13175.

## **Regulatory Impact Analysis**

This rule has been designated as non-significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be not significant under section 3(f) of Executive Order 12866.

### **Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). It has been certified that this final rule will not have a significant economic impact on a substantial number of small entities. Departmental Field, Regional, and Area Offices, retailers and other firms participating or applying to participate in the Supplemental Nutrition Assistance Program, State agencies that distribute Supplemental Nutrition Assistance Program benefits and State agencies and ITOs that administer Food Distribution of Indian Reservations, are the entities affected by this change.

## **Public Law 104-4**

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

## **Executive Order 12372**

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

## **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have Federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of the Executive Order 13132. The Department has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

#### **Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule will have preemptive effects with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effects. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

#### **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on



the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. Each session was fully transcribed and the comments received relative to this regulation follow:

One commenter expressed general concern regarding the disparity in benefit value as a result of the increase in SNAP benefits following the American Recovery and Reinvestment and Act (ARRA); FDPIR benefits were not subject to an ARRA increase.

One commenter noted that County level SNAP office staff should have been in attendance at this consultation; if county level staff is not aware of the prohibition relative to dual participation, then they will not abide by that prohibition. This was reiterated by a second commenter who noted that county level SNAP staff should be in the communication loop and receive training. The Department noted that a process of notifying all stakeholders would occur once this regulation is finalized. A third commenter made a procedural recommendation requiring that SNAP certification staff contact the ITO to ensure that applicant clients are not dually participating in FDPIR.

One commenter expressed support for the reciprocal SNAP disqualification that would be based on an intentional program violation in FDPIR.

One commenter noted that direct access to county level SNAP staff would be beneficial; currently the ITO calls the county level office and is subject to an automated message when checking dual participation.

Several commenters noted that access to an automated system for checking dual participation and reciprocal disqualification is practically necessary to make the process work, and that the current process of checking paper printouts is not practical. The Department noted that some ITO's have successfully executed an MOU with the State SNAP agency or county SNAP offices that allow them view-only access to State certification systems for these kinds of checks. Some participating ITO's noted difficulties in getting such MOU's in place. The Department committed to assist ITO's with this process in Oklahoma, and more broadly, to seek examples of successfully executed MOU's and provide those to appropriate stakeholders.

USDA committed to responding in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country. No additional comments were received during the proposed rule comment period.

We are unaware of any current Tribal laws that could be in conflict with this rule. No concerns in this regard were expressed in the proposed rule comment period.

### **Civil Rights Impact Analysis**

The Department has reviewed this rule in accordance with Departmental Regulations 4300–4, “Civil Rights Impact Analysis,” and 1512–1, “Regulatory Decision Making Requirements.” After a careful review of the rule’s intent and provisions, the Department has determined that this rule will not in any way limit or reduce the ability of protected classes of individuals to receive SNAP benefits on the basis of their race, color, national origin, sex, age, disability, religion or political belief nor will it have a differential impact on minority owned or operated business establishments, and women owned or operated business establishments that participate in SNAP.

The regulation affects or may potentially affect the retail food stores and wholesale food concerns that participate in (accept or redeem) SNAP. The only retail food stores and wholesale food concerns that will be directly affected, however, are those firms that violate SNAP rules and regulations. The Department does not collect data from retail food stores or wholesale food concerns regarding any of the protected classes under Title VI of the Civil Rights Act of 1964. As long as a retail food store or wholesale food concern meets the eligibility criteria stipulated in the Food and Nutrition Act of 2008 and SNAP regulations, they can participate in SNAP. Also, the Department specifically prohibits retailers and wholesalers that participate in SNAP from engaging in actions that discriminate based on race, color, national origin, sex, age, disability, religion, or political belief. This rule will not change any requirements related to the eligibility or participation of protected classes or individuals, minority-owned or operated business establishments, or women-owned or operated business establishments in SNAP. As a result, this rule will have no differential impact on protected classes of individuals,

minority-owned or operated business establishments, or women-owned or operated business establishments.

Further, the Department specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that “State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of the program administration is prohibited by these regulations, according to the Act. Enforcement may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.” Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

This rule will not affect the reporting and recordkeeping burden and does not contain additional burden requirements subject to OMB approval other than those that have been previously approved in OMB# 0584-0064, expiration date 03/31/2013, by OMB under the Paperwork Reduction Act of 1995.

### **E-Government Act Compliance**

The Department is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

### **Lists of Subjects**

#### 7 CFR Part 271

Food stamps, Grant programs-Social programs, Reporting and recordkeeping requirements.

#### 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs-social programs, Income taxes, Reporting and recordkeeping requirements, Students, Supplemental Security Income, (SSI), wages.

#### 7 CFR Part 281

Administrative practice and procedure, Food stamps, Grant programs-Social programs, Indians.

Accordingly, 7 CFR Parts 271, 273 and 281 are amended as follows:

1. The authority citation for 7 CFR parts 271, 273 and 281 continues to read as follows:

**Authority:** 7 U.S.C. 2011-2036.

## **PART 271—GENERAL INFORMATION AND DEFINITIONS**

2. In Part 271:

a. Except in § 271.5, remove the words “the Food Stamp Program”, “the food stamp program”, “The Food Stamp Program”, or “FSP” wherever they appear and add, in their place, the word “SNAP”;

b. Remove the words “a food stamp program” or “a Food Stamp Program” wherever they appear and add, in their place, the words “a supplemental nutrition assistance program”;

c. Remove the words “Food Stamp Act of 1977” and add in their place the words “Food and Nutrition Act of 2008” wherever they appear, except in the definition of “Food Stamp Act” in § 271.2;

d. Remove the words “Food Stamp Act” and add in their place the words “Food and Nutrition Act of 2008” wherever they appear, except in the definition of “Food Stamp Act” in § 271.2;

e. Remove the words “food stamps” wherever they appear and add, in their place, the words “SNAP benefits”;

f. Remove the words “food stamp” wherever they appear and add, in their place, the word “SNAP”;

3. In § 271.2, the definition of Trafficking is revised to read as follows:

**§271.2 Definitions.**

\* \* \* \*

Trafficking means:

(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;

(3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

\* \* \* \*

4. In § 271.5, remove the words “the food Stamp program” wherever they appear and add, in their place, the words “the supplemental nutrition assistance program”;

## **PART 273–CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

5. In § 273.11:

- a. Remove the words “the Food Stamp Program” or “the food stamp program” wherever they appear and add, in their place, the word “SNAP”;
- b. Remove the words “food stamps” wherever they appear and add, in their place, the words “SNAP benefits”;
- c. Remove the words “food stamp” wherever they appear and add, in their place, the word “SNAP”;
- d. Add two new sentences at the end of paragraph (k) introductory text.
- e. Add a new sentence to the end of paragraph (k)(6).

The additions read as follows:

### **§ 273.11 Action on households with special circumstances.**

\* \* \* \* \*

(k) \* \* \* In the case of disqualification from the Food Distribution Program on Indian Reservations (FDPIR) for an intentional program violation as described under § 253.8 of this chapter, the State agency shall impose the same disqualification on the member of the household under SNAP. The State agency must, in cooperation with the



appropriate FDPIR agency, develop a procedure that ensures that these household members are identified.

\* \* \* \*

(6) \* \* \* In instances where the disqualification is a reciprocal action based on disqualification from the Food Distribution Program on Indian Reservations, the length of disqualification shall mirror the period prescribed by the Food Distribution Program on Indian Reservations.

\* \* \* \*

## **PART 281 – ADMINISTRATION OF SNAP ON INDIAN RESERVATIONS**

6. Revise the heading of part 281 to read as set forth above.

7. In part 281:

a. Remove the words “the Food Stamp Program” wherever they appear and add, in their place, the word “SNAP”;

b. Remove the words “Food Stamp Act of 1977” wherever they appear and add, in their place, the words “Food and Nutrition Act of 2008”;

c. Remove the words “1977 Food Stamp Act” wherever they appear and add, in their place, the words “Food and Nutrition Act of 2008”;

8. In § 281.1(c) remove the regulatory reference “§ 283.7(e)” and add, in its place, the regulatory reference “§ 253.7(e)”.

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February 4, 2013\_

Audrey Rowe  
Administrator  
Food and Nutrition Service

Date

[FR Doc. 2013-04044 Filed 02/20/2013 at 8:45 am; Publication Date: 02/21/2013]